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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/028,909	12/28/2001	Dietmar Przytulla	2511-099	2675
7590 10/20/2004				
HENRY M. FEIEREISEN 350 FIFTH AVENUE, SUITE 4714 NEW YORK, NY 10118				
			EXAMINER DEL SOLE, JOSEPH S	
			ART UNIT 1722	PAPER NUMBER
DATE MAILED: 10/20/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/028,909	Applicant(s) PRZYTULLA ET AL.	
	Examiner Joseph S. Del Sole	Art Unit 1722	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 1-12 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 December 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/28/01 & 9/15/04</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 1-12 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** indication of traverse in the reply filed on 8/2/04. The Examiner notes that the Applicant is correct and claims 13-23 will be examined, not just 13-20.

Drawings

2. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because **a)** the lines, numbers and letters are not uniform, clean and well defined (of a generally poor quality) in each of the 18 figures (37 CFR 1.84(l)). Applicant is advised to employ the services of a competent patent draftsman outside the Office, as the U.S. Patent and Trademark Office no longer prepares new drawings. The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Specification

3. The abstract of the disclosure is objected to because **a)** it refers to both the method and the apparatus, however only the apparatus is elected and examined; and **b)** the terminology "device is of an enhanced design which avoids the shortcomings of traditional blow-molding technology" and "technical concept is introduced whereby, as a novel process" is inappropriate and should be deleted. Correction is required. See MPEP § 608.01(b).

Art Unit: 1722

4. The disclosure is objected to because of the following informalities: **a)** the title currently related to both the process and apparatus, but since only the apparatus is elected the title should be amended to reflect apparatus only; **b)** at page 7, line 1 "DF II" should be changed to --DS II-- in order to match the rest of the specification and the drawings; and **c)** the list of reference numerals at page 14 should be deleted.

Appropriate correction is required.

Claim Objections

5. Claim 13 is objected to because of the following informalities: **a)** at claim 13, lines 7-8 "second control element is position between" should be changed to --second control element is positioned between-- in order to be grammatically correct.

Appropriate correction is required.

Double Patenting

6. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Art Unit: 1722

7. Claims 13, 16-18 and 20-23 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 3, 7, 9 and 11 of U.S. Patent No. 6,773,249.

Although the conflicting claims are not identical, they are not patentably distinct from each other because 6,773,249 teaches a parison extrusion device having an extrusion end provided with an adjustable nozzle gap (claim 1, lines 4) formed between cooperating first, second and third control elements on a first side of the nozzle gap (claim 1, lines 4-9 and claim 1, lines 22-25) and an adjustable mandrel on a second, opposite side of the nozzle gap (claim 1, lines 14-16); the first, second and third control elements are adjacent to one another with the first control element being farthest from a nozzle exit from which a parison is extruded, the third control element is closest to the nozzle exit and the second control element is positioned between the first and third control elements (claim 1, lines 10-25); the second, and third control elements are independently movable relative to the first control element (claim 1, lines 6-25); the third control element is provided with a serrated tooth/interstitial-gap profile configured to partially laterally displace plastic material in the nozzle gap (claims 2 and 3); gap-delimiting surfaces of the mandrel and the second control element are smooth while gap-delimiting surfaces of the first and third control elements are contoured (claims 7, 9 and 11); and a bottom-most inner edge of the third control element is positioned no lower than a bottom-most outer edge of the mandrel (claims 1 and 2).

Art Unit: 1722

8. Claims 14-15 and 19 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3, 7, 9 and 11 of U.S. Patent No. 6,773,249 in view of Feuerherm (4,382,766).

Claims 1-3, 7, 9 and 11 of 6,773,249 teach the invention as set forth above.

6,773,249 fails to teach the mandrel being mounted on an axially adjustable mandrel support and the mandrel having a truncated cone shape.

Feuerherm (4,382,766) teaches a mandrel having a truncated cone shape (Fig 1, #17) that is mounted on an axially adjustable mandrel support (Fig 1, #16) for the purpose of adjusting its radial dimension.

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the invention of claims 1-3, 7, 9 and 11 of 6,773,249 with a truncated cone shaped mandrel mounted on an axially adjustable support as taught by Feuerherm (4,382,766) because it enables adjustment of the radial dimension.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

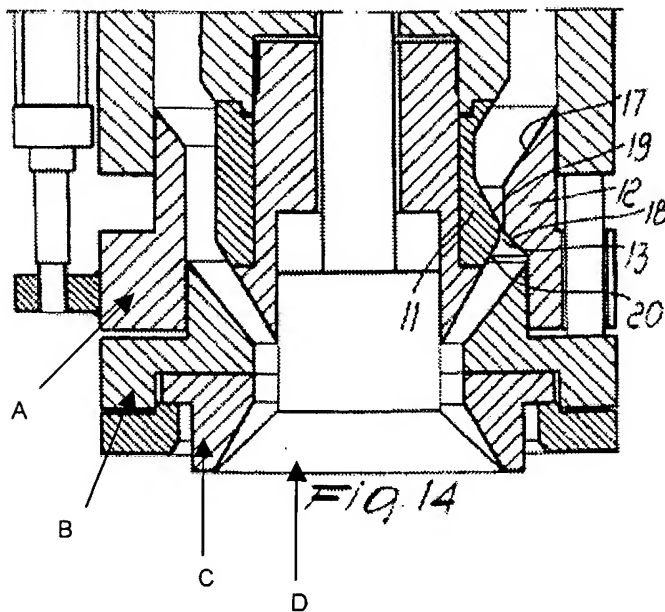
10. Claims 13-15, 17, 18, 20 and 22-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Przytulla (4,208,178).

Art Unit: 1722

Przytulla teaches a parison extrusion device having an extrusion end provided with an adjustable nozzle gap (Fig 2) formed between cooperating first, second and third control elements on a first side of the nozzle gap (Figure 2, #7, 1 and feature on the other side of #6 from the mandrel cap) and an adjustable mandrel (Fig 2, #2) on a second, opposite side of the nozzle gap (Fig 2); the first, second and third control elements are adjacent to one another with the first control element being farthest from a nozzle exit from which a parison is extruded, the third control element is closest to the nozzle exit and the second control element is positioned between the first and third control elements (Fig 2); the second, and third control elements (Fig 2, #s 1 and the feature on the other side of #6 from the mandrel cap) are independently movable (Fig 2) relative to the first control element (Fig 2, #7); the mandrel is mounted on an axially adjustable mandrel support (Fig 3); the mandrel has a truncated cone shape (Fig 2); the gap-delimiting surfaces of the mandrel and the second control element are smooth while gap-delimiting surfaces of the first and third control elements are contoured (Fig 2); and a bottom-most inner edge of the third control element is positioned no lower than a bottom-most outer edge of the mandrel (Fig 2).

11. Claims 13-15, 17, 18, 20 and 22-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Tietto (EP 0 478 957 A1).

Tietto teaches a parison extrusion device having an extrusion end provided with an adjustable nozzle gap (Fig 14):



formed between cooperating first, second and third control elements on a first side of the nozzle gap (Figure 14, Examiner added A, B and C above) and an adjustable mandrel (Fig 14, D) on a second, opposite side of the nozzle gap (Fig 14); the first, second and third control elements are adjacent to one another with the first control element being farthest from a nozzle exit from which a parison is extruded, the third control element is closest to the nozzle exit and the second control element is positioned between the first and third control elements (Fig 14); the second, and third control elements (Fig 14, B and D) are independently movable (see Figures 8 and 14) relative to the first control element (Fig 14, A); the mandrel is mounted on an axially adjustable mandrel support (Fig 14); the mandrel has a truncated cone shape (Fig 14); the gap-delimiting surfaces of the mandrel and the second control element are smooth while gap-delimiting surfaces of the first and third control elements are contoured (Fig

Art Unit: 1722

14); and a bottom-most inner edge of the third control element is positioned no lower than a bottom-most outer edge of the mandrel (Fig 14).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

14. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Art Unit: 1722

15. Claims 16, 19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Przytulla (4,208,178) in view of British Patent 1,107,628.

Przytulla teaches the invention as discussed above.

Przytulla fails to teach the third control element having a serrated tooth/interstitial-gap profile configured to partially laterally displace plastic material in the nozzle gap.

British Patent 1,107,628 teaches control elements having a serrated tooth/interstitial-gap profile (Figures 5(a), 5(b) and 6) for the purpose of creating axially spaced ribbed portions at selected intervals along the walls of the parison (page 3, lines 5-25).

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the invention of Przytulla with the third control element having a serrated tooth/interstitial-gap profile as taught by British Patent 1,107,628 because it enables ribs to be formed on the parison.

16. Claims 16, 19 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tietto (EP 0 478 957 A1) in view of British Patent 1,107,628.

Tietto teaches the invention as discussed above.

Tietto fails to teach the third control element having a serrated tooth/interstitial-gap profile configured to partially laterally displace plastic material in the nozzle gap.

British Patent 1,107,628 teaches control elements having a serrated tooth/interstitial-gap profile (Figures 5(a), 5(b) and 6) for the purpose of creating axially

Art Unit: 1722

spaced ribbed portions at selected intervals along the walls of the parison (page 3, lines 5-25).

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the invention of Tietto with the third control element having a serrated tooth/interstitial-gap profile as taught by British Patent 1,107,628 because it enables ribs to be formed on the parison.

Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Joseph S. Del Sole whose telephone number is (571) 272-1130. The examiner can normally be reached on Monday through Friday from 8:30 A.M. to 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Benjamin Utech, can be reached at (571) 272-1137. The official fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306 for both non-after finals and for after finals.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from the either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on the access to the Private PAIR system, contact the Electronic Business Center (EBC) at 886-217-9197 (toll-free).

Joseph S. Del Sole
U.S.D.

October 15, 2004